

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Dino Antolini,

Plaintiff,

-against-

Amy McCloskey, et al.,

Defendants.

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DATE FILED: 9/4/2020

1:19-cv-09038 (GBD) (SDA)

ORDER

**STEWART D. AARON, UNITED STATES MAGISTRATE JUDGE:**

WHEREAS, on August 7, 2020, due to the multiplicity of discovery disputes between the parties and their inability to resolve them in an orderly manner, this Court entered an Order requiring any future discovery disputes to be resolved in a specific manner (8/7/2020 Order, ECF No. 63);<sup>1</sup> and

WHEREAS, on August 26, 2020, Defendants' counsel sent a letter to Plaintiff's counsel in conformity with my August 7 Order, seeking to resolve a dispute regarding Plaintiff's failure to respond or object to Defendants' Second Set of Interrogatories and First Request for Production of Documents that had been served in June 2020 (Defs.' 8/26/20 Ltr., ECF No. 72-4); and

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<sup>1</sup> Forty-eight hours prior to any meet-and-confer, the party seeking discovery shall send an itemized agenda of the matters to be discussed. Within forty-eight hours of the meet-and-confer phone call, the party seeking discovery shall send a letter to his adversary memorializing the issues upon which agreement was reached, as well as any issues in dispute, and set forth the parties' respective positions. Within forty-eight hours of receiving his adversary's itemized agenda letter, the party upon whom discovery is sought shall annotate that letter with any corrections or modifications and send them to his adversary. If a dispute remains after this process, then the parties shall forward the annotated correspondence to Judge Aaron who shall resolve the dispute based upon the parties' respective positions set forth in the annotated letter. (8/7/2020 Order at 2.)

WHEREAS, on Friday, August 28, 2020, Defendants' counsel sent a follow-up email to Plaintiffs' counsel regarding his failure to respond to the August 26 letter, as well as the interrogatories and document requests (Defs.' 8/28/20 email, ECF No. 72-5); and

WHEREAS, on Monday, August 31, 2020, Defendants' counsel filed a Letter Motion to compel Plaintiff to respond to the interrogatories and document requests (Defs.' 8/31/20 Ltr. Mot., ECF No. 72); and

WHEREAS, on Wednesday, September 2, 2020, Plaintiff's counsel filed a response letter with the Court in which he does not dispute that he failed to provide written responses or objections to the outstanding interrogatories and document requests (see Pl.'s 9/2/20 Response, ECF No. 73).<sup>2</sup>

NOW, THEREFORE, it is hereby ORDERED, as follows:

1. No later than Wednesday, September 9, 2020, Plaintiff shall serve on Defendants written responses and/or objections to Defendants' Second Set of Interrogatories and First Request for Production of Documents.
2. Pursuant to Rule 37(b)(2)(C) of the Federal Rules of Civil Procedure, Defendants are entitled to monetary sanctions for Plaintiff's failure to comply with the Court's August 7 Order in the amount of the reasonable attorneys' fees expended by Defendants' counsel in connection with filing his August 31 Letter Motion, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

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<sup>2</sup> Although Plaintiff's counsel purports to have called Defendants' counsel "numerous" times to "remind them of [a purported] agreement," he fails to address the missing written discovery responses, and provides no contemporaneous writings to the Court regarding such calls or agreement. (See Pl.'s 9/2/20 Response.)

3. No later than September 9, 2020, Defendants' counsel shall file with the Court a declaration setting forth the hours expended by him in preparing his August 31 Letter Motion and his September 3, 2020 Reply (Defs.' 9/3/20 Reply, ECF No. 74), as well as the hourly rate charged to his clients for such hours expended.
4. If Plaintiff's counsel objects to paying to Defendants' counsel the amount of attorneys' fees set forth in Defendants' counsel declaration, then no later than September 11, 2020, he shall file a letter not to exceed three-pages setting forth the basis for his objections, addressing why an award in such amount would be unjustified or unjust. Any reply by Defendants' counsel (not to exceed three pages) shall be filed by September 15, 2020.

**SO ORDERED.**

DATED:        New York, New York  
                  September 4, 2020

  
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STEWART D. AARON  
United States Magistrate Judge